UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER NORRIS d/b/a WEBCOMIC NAME,	:	Case No.: 19-cv-5491
Plaintiff,	:	
v.	:	
MARC GOLDNER, et al.,	:	New York, New York
Defendants.	:	April 19, 2023

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE SARAH NETBURN

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:
SAUL EWING LLP
BY: Francelina M. Perdomo
Christie R. McGuinness
1270 Avenue of the Americas
New York, New York 10020

For Defendant:
GERARD FOX LAW P.C.
BY: Ryan Dolan
1345 Sixth Avenue
New York, New York 10006

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MS. PERDOMO: Francelina Perdomo, Saul Ewing LLP for the plaintiff, Alexander Norris.

THE COURT: Thank you.

MS. McGUINESS: Good morning, your Honor. Christie McGuiness, also Saul Ewing LLP for the plaintiff.

THE COURT: Thank you.

MR. DOLAN: Good morning, your Honor. Ryan Dolan, Gerard Fox Law, for defendant.

THE COURT: Thank you.

Okay. Thank you all for being here. I appreciate everybody coming in on slightly short notice. We have been studying the parties' motions and I must confess, have a fair amount of confusion about what is being alleged and what the parties are asking the Court to do. And so rather than stumble through it, we thought we would give you all an opportunity to try and clarify some of the points. Thank you for your letters. That helped in part, though we still have some confusions.

So why don't I just jump right in. Let me first begin by asking a question of plaintiff's counsel with respect to a case from the district -- same district judge who is the district judge in this case. This is with respect to counts one and

two, which I understand are an unauthorized copying claim and a false designation claim. Both of those are in connection with an application that remains pending, as I understand it, to the PTO.

And my question for plaintiff's counsel is how to establish use in commerce in order to bring those claims, particularly in consideration of the Unicorn case, that's Unicorn Crowdfunding versus New Street Enterprise. The citation is 507 F.Supp.3d 547. It's a 2020 decision from District Judge Engelmayer, and in it, he interprets the statute and concludes that an application to the PTO does not constitute use in commerce.

So my question for Ms. Perdomo is, do you have any authority to the contrary? And if not, how do you believe you can establish the elements of those two claims?

MS. PERDOMO: Thank you, your Honor. Just as a clarification, so that I understand what argument the Court wants me to make, this case, Unicorn, I believe the defendants are citing to this case because --

THE COURT: Correct.

MS. PERDOMO: Okay, great. And is this case related to copyright infringement or to using

commerce of the Webcomic Name mark vis-a-vis the guest card?

THE COURT: This is your case. So my understanding of what you're alleging, and tell me if I'm wrong, my understanding of counts one and two are that the defendant violated your client's copyright by applying to the PTO for use of the Webcomic Name and "Oh No" in various classes. And that you argue that by screenshotting pages and the like in those applications, that there was a false designation of origin and an unauthorized copying.

And my question to you is, are you aware of any authority that authorizes those two claims based on the filing of an application to the PTO?

MS. PERDOMO: Your Honor, our position is that --

THE COURT: Sorry, can you just answer the question? Are you aware of any cases that allow you to bring a copyright infringement or a false designation claim based exclusively on the application?

MS. PERDOMO: Yes, your Honor. We cite United We Stand. United We Stand versus United We Stand. The citation is 128 F --

THE COURT: Is that in your letter?

MS. PERDOMO: That is in our brief.

THE COURT: In your brief. Okay.

MS. PERDOMO: The reason that is not in our letter is because I have a completely different approach regarding the copyright infringement. And if you wanted to go into it, but this particular case, in this case, the Court held that notwithstanding jurisdictional "in commerce requirement," Section 114 contains no commercial activity requirement. Rather, it prohibits any person from, without consent of the registrant of a mark, using the mark in connection with the sale, offering for sale, distribution or advertising of any good or services, or in connection with such use is likely to cause confusion or cause a mistake or to deceive.

THE COURT: Okay. I don't have the case in front of me, so it sounds like that case stands for the proposition that if you are using the copyrighted material in commerce or offering something for sale, that that would be a violation.

Is that what that case stands for?

MS. PERDOMO: Yes. Yes, your Honor.

THE COURT: Okay. So I think the question is whether or not applying to the PTO

constitutes in commerce. That's the question that I'm asking.

MS. PERDOMO: Our position is that it does not have to constitute in commerce because copyright infringement is a strict liability offense. So the mere fact that defendants copied these protected materials and submitted it to the USPTO, essentially -- essentially, the fact that they copied those materials and submitted it to the USPTO constitutes infringement per se because it's a straight liability offense.

And in support of this case, we have Strike 3 Holdings versus Doe. And it says that the only two aspects that a party must show is ownership of a valid copyright and unauthorized copy. And we believe that in this case, we have those two elements. And the using commerce element, it's a trademark concept, not a copyright infringement concept.

So in other words, when we discussed the use in commerce issue, we talked about whether plaintiff, defendants ever used any of these items in commerce in order to satisfy the requirement from the USPTO requirement that the mark be in commerce in order for it to be registered.

So, in our view, there are two completely different approaches and arguments. One is the copyright infringement argument, which is copyright is a strict liability offense. Intent is not taken into consideration, use is not taken into consideration. The only two requirements for this claim to exist is ownership of a valid copyright and copy. And based on the evidence on the record, those two are met in this case.

THE COURT: Okay. Okay. I think I understand your position. And so those two claims relate, just so I'm clear, exclusively to the application to the PTO; is that correct?

MS. PERDOMO: Right. The copyright infringement claim relates to defendants' actions in connection to their application to the USPTO. What they did is a strict liability offense, which taking our client -- our client's content, copying without authorization and then submitting them to the USPTO.

The false designation of origin claim comes with that action as well, because they went to the USPTO and they claimed to the USPTO that those products, which defendants clearly admit, specifically Mr. Goldner, in his deposition, that the company never commercialized these items.

The defendants went to the USPTO and alleged to the USPTO that they were commercializing these items and screenshot copies of -- screenshot images of T-shirts and other items that our client had in commerce. And then claimed to the USPTO that those items belong to them, to the defendants.

And, you know, as a result of those actions, we believe that plaintiff meets the requirements of the false designation of origin because it is well established that false designation of origin occurs where goods or services are involved and there is a false designation of origin or a false description or representation with respect to those goods or services -- or services.

And in support of this argument, we cite Pulse Creations versus Vesture Group. And this is Southern District of New York, decided in 2015. So we believe that --

THE COURT: And what does Pulse Creations stand for?

MS. PERDOMO: It stands for the proposition that there's false designation of origin when the party falsely represents the origin of those boxes. So in other words --

THE COURT: And it can be abstractly. It

doesn't need to be in commerce. That's your position?

MS. PERDOMO: No, your Honor, it needs to be in commerce. So that I do agree, it needs to be in commerce.

THE COURT: Okay. So then let's circle back to the Unicorn case, which is a false designation case, and goes through this specific issue and discusses the need to have use in commerce and what that means, and concludes that the defendant's trademark application -- I'm quoting now, "falls outside the scope of a use in commerce as defined by Section 1227. Such an application seeks merely to reserve a right in a mark and does not involve goods or services sold or rendered in commerce."

So I think a strict application of Unicorn Crowdfunding, which, of course, is not binding on this Court, so if you want to argue that Judge Engelmayer got it wrong, I'm happy to hear from you.

MS. PERDOMO: Yes, your Honor, you are correct as to your interpretation of that case. Our case, however, denotes commerce authority under the commerce laws rather than an intent to limit the

act's application to profit-making activity. So our position is that this particular case that we cite does not require --

THE COURT: Pulse Creations?

MS. PERDOMO: No, this is going back to -- Pulse Creations -- we are citing Pulse Creations for the elements -- for the elements of this false designation of origin.

With regards to distinguish Unicorn, we're citing in our brief to United We Stand. And yes, your Honor, you're right, we did not cite that in our letter. But this particular case, in this case, denotes commerce authority under the commerce laws rather than an intent to limit the act's application to profit median activity.

So our position is that, yes, your Honor, you're correct. In this case, there was not using commerce. But there's an exception to that requirement, and that exception is in this particular case that I just mentioned to you.

THE COURT: Okay. Does defendant want to respond on counts one and two?

MR. DOLAN: Yes, your Honor. I do believe that your interpretation of the Unicorn Crowdfunding case is right. Mr. Engelmayer -- Judge

Engelmayer makes it pretty clear that an application does not meet the use in commerce. And I think even under plaintiff's argument, they still fail to ascertain how defendants used this mark in their application with respect to goods and services, right. There's no allegation that they produced any goods or services in connection with this application that would cause confusion within the commercial market. It's simply a trademark application, which Judge Engelmayer clearly denotes is outside the scope of use in commerce.

THE COURT: Are you familiar with any of the cases that plaintiff cites? And do you have any comments about them, if so?

MR. DOLAN: Your Honor, I am familiar with them to the extent that I did counter them and denote why plaintiff was mistaken in the way that they cited those in our briefs. But I don't have those in front of me, so I can't make that argument here. But they are in the briefs as to why we believe that those cases are not on point the way the plaintiff believes.

THE COURT: Okay. All right. Let me actually go back to you, Mr. Dolan, if I may, and let's move on. I think I want to, just for a

second, move to the breach of contract claim, which is count four. And I want to now focus on defendant's position, because I'm having a hard time understanding what your position is and how you land on it.

In your letter of April 18th, you say, sort of, generally section 1A of the agreement states that, unequivocally, 100% of the copyright, trademark and patent are transferred to defendants as a result of the execution of the agreement. And you repeat that.

In the next paragraph, first, it is clear that there is an assignment of 100% of the copyright and the trademark to defendants. You continue in that same paragraph, saying that in Section 3C, grants defendants the rights to other works which contain characters covered by the agreement.

So can you tell me what you believe your clients' rights are as a result of this agreement? And if you could speak with as much specificity as possible, both as to the scope of what you believe this agreement covers as well as the provisions in the agreement.

MR. DOLAN: Yes, your Honor. Your Honor, you know, I think the contract does speak for

itself.

THE COURT: The contract is terrible. It's impossible to read. So I'm not sure it speaks for itself at all. Sorry to interrupt you.

MR. DOLAN: That's okay, your Honor.

So section 1A does state that there is 100% of the trademark and 100% of the copyright related to the works, which are then conveyed from Mr. Norris to defendants.

THE COURT: Okay. So what do you believe the works are?

MR. DOLAN: So, your Honor, I think the works state that here, right, and if you read the opening paragraph, it does define the works as Webcomic Name Game and Webcomic Name stuffed animals.

THE COURT: Okay. So the works are the game and the animals?

MR. DOLAN: Yes, your Honor. But I believe, you know, if we also look at the contract in its entirety, which the case law does dictate us to do, right, in the summary judgment phase, we have to look at it within the entire context of the agreement. There are also multiple provisions and clauses that expand that out, right?

So if we look at section 1F, it states in the first sentence here, that the artist confirms that all rights, interests and licenses related to the multimedia property, Webcomic Name Game, have been transferred to the company upon signing of the agreement, and the contract signed between Jason Wiseman and company.

Clearly, here the defendants are indicating what they've indicated both in this contract and in their discussion with Mr. Norris, that they view this property as a brand, a multimedia brand expanded beyond the game and the plush animals.

And, your Honor, if we look at section --

THE COURT: Sorry, where do you see that here?

MR. DOLAN: Yes, your Honor, that's section 1F, the very first sentence of that clause.

THE COURT: Okay. "The artist hereby confirms that all rights, interests and licenses relating to the multimedia property, Webcomic Name Game, has been transferred to the company upon the signing of the agreement."

So you read that as transferring something more than rights in the game and the

animals?

MR. DOLAN: Yes, your Honor. And if we look to -- specifically to clause -- if we look specifically to clause 2B, that point is further enforced, right, because it states that it is understood and agreed that parties shall share, hereunder, without limit, unless otherwise herein stated, the proceeds from the sale or any and all other disposition of the works and the rights, interests and licenses therein with respect to, including, but not limited to the following, and it lists a number of multimedia properties, you know, from comic book rights, from film rights, from animation rights, et cetera. And that further lays out that should these properties be made, the artist is entitled to the same case structure that he would be for the game or the plush dolls.

So this is clearly another furthering of defendants' intention and Mr. Norris' intention that this is not limited to a game or plush, that they view this as a larger whole brand that can be expanded into a number of mediums.

THE COURT: And so it's your interpretation of paragraph 1F and 2B that, collectively, it essentially gives the defendants

all rights in Webcomic Name and the expression "Oh No," and all of the artist's intellectual property? Is that your interpretation?

MR. DOLAN: Your Honor, there is another clause in here that I think, if we look at section 2C, also expands into that right that we're discussing, where it says that, "Companies shall have sole ownership of the original artwork used and created for the works by either artist or the company."

So once Mr. Norris takes these sketches of plush dolls or sketches of game cards, including this pink blob, the cat, "Oh No," Webcomic Name, whatever have you is on these sketches that were delivered to defendants for the purposes of this game and the plush dolls, that becomes ownership of defendants.

THE COURT: To all of his intellectual property rights?

MR. DOLAN: Whatever is contained within those plush dolls and sketch cards for the game, which includes the pink blob, which includes Webcomic Name, which includes "Oh No," which includes the cat drawing that he has, he delivers a number of sketches saying, hey, here's an idea for

the plush doll, here's what I'm thinking. It's an "Oh No" bubble pillow.

And then additionally, whatever is involved in the test game cards that he originally sent, under this contract becomes ownership of defendants, sole ownership, including that 100% copyright and 100% trademark.

THE COURT: So let me ask you a hypothetical question, if I can.

MR. DOLAN: Absolutely.

THE COURT: Let's say the defendants were fortunate enough to enter into this agreement with the Simpsons, and there was going to be a Homer Simpson board game. And in this agreement, in the preliminary paragraph, it said that this is agreement for the production of the properties, tentatively entitled The Homer Simpson Game, herein after -- and The Homer Simpson stuffed animals, the works, all right, everything else is now the same in this agreement. Would that entitle your client to the rest of The Simpsons, all of the recreations, T-shirts, episodes, movies? Under your reading of this agreement, would that be the rights that your client would have obtained?

MR. DOLAN: I think it would entitle them

to whatever The Simpsons then provided as sketches for that board game.

THE COURT: Well, presumably it would include, for instance, a sketch of Homer Simpson.

MR. DOLAN: Presumably, your Honor.

THE COURT: Okay. And so then would your client own the intellectual rights to the Homer Simpson image, which is the same every time it's recreated?

MR. DOLAN: Yes, your Honor. I believe so. I wouldn't advise The Simpsons to enter into that contract and sign away those rights, but I do believe that that's what is transferred in this contract. And if that contract were signed by The Simpsons, then, yes, that is what I believe this contract says.

THE COURT: Okay. And so I understand your arguments, you believe that 1F expands beyond the game and the animals, and that 2B and 2C do the same?

MR. DOLAN: Yes, your Honor, I think when read in conjunction, that is what it is.

THE COURT: Is there any limiting factor in your interpretation?

MR. DOLAN: Your Honor, I would say in

terms of that, it doesn't expand to all of Mr. Norris' intellectual property. It expands to whatever he created for -- the artwork that he created for this game and the plush. So, for instance, if he goes out and draws another comic tomorrow that doesn't include any of the characters he provided for this game, this plush, this multimedia brand, then, you know, it doesn't expand his entire universe or anything he creates in the future, just whatever he created for this game that has now been transferred to the defendants.

THE COURT: Okay. But we agree that the Webcomic Name image doesn't vary. So the image that was given to your client for the purposes of creating the works would, under your theory, entitle your client to the rest of this artist's character in perpetuity?

MR. DOLAN: For the Webcomic Name specifically, yes, your Honor, because I do believe that Mr. Norris has different comics under other names, Dorris McComics, things like that, that are substantially different than the Webcomic Name brand.

THE COURT: Okay. And what did he receive? He received 4% of any royalties; is that

right?

MR. DOLAN: Your Honor, I believe it's 5% initially for the first 18 months and then 4% thereafter. And, your Honor, I believe he does get complimentary units of the game, plush dolls, were they to be created, had defendant -- had Mr. Norris provided the final files.

THE COURT: I'm looking for another provision that I wanted to ask you about. Can you tell me how you interpret paragraph -- the second paragraph, 2A. So there's 2A, and then it goes through the alphabet, and then you get to M, and then you get to A again. "Creator may not create any unaffiliated work that has the potential to damage the works." What does that mean?

MR. DOLAN: So, your Honor, what that's saying is, in this contract, the defendants are investing in the Webcomic Name brand as well as Mr. Norris as an artist, right?

Because Mr. Norris is supposed to play a role in promoting this brand and building it up beyond the simple, you know, web comic, viral web comic that it is, into the global brand that defendants envision. What this is saying, this is essentially a good-cause provision. For instance,

there's, like, one brand of the comics that Mr. Norris created subsequent to entering this provision that is best described as blob erotica, where it has blobs engaging in sexual acts or making sexual comments, things like that. That would be something that, should defendants determine is harmful to the brand that they see as kind of a PG version that they can market to kids, would be a violation of this provision.

THE COURT: Okay. What about paragraph -- I found what I actually wanted to ask you about -- paragraph 3C. How do you interpret that paragraph?

MR. DOLAN: So, your Honor, this is another paragraph that is speaking to the rights of the client. This is, if artists should create any sequel works containing the characters that he provided in the sketches and that were set to appear in the games and the plushes, that if he were to do that, that, (A), defendants will take the due diligence in protecting those works because that is required by this contract, such as the trademark and copyright protections; and, (B), that he will receive the same pay structure as this contract.

THE COURT: Well, it's more than that,

right? "Artists shall submit to company all sequels to the works," which, again, we agree is games and animals, "or other works using characters that appear in the works and any other unrelated characters." What does that mean?

MR. DOLAN: Your Honor, so I think the interpretation there is that -- so, your Honor, that idea is so if the characters that are set to appear in the works, say, make an appearance in any other non-Webcomic Name games or Webcomic Name comics, right, so say, for instance, his Dorris McComics, where his comics appear in human form and not the blob form, but the blob all of a sudden makes a cameo appearance, then that would be similar to what should be submitted to defendants, because that is not their property.

THE COURT: Can you guys say that over again? I didn't follow that at all.

MR. DOLAN: I didn't say that very well. I apologize, your Honor.

So, for instance, should this blob character, right, let's use the pink blob, for example, should he make an appearance in Mr. Norris' other comics, right, so we talked about how he has Dorris McComics, which is a completely different

brand drafted artwork, it's a different style. It's a human comic. If the blob all of a sudden shows up in that comic as a recurring character, then those comics would need to be submitted to the defendants.

THE COURT: It seems like, as I understand what you're trying to say, this would give you rights to everything he does. I don't understand. This says -- so sequels to the works. I get that.

MR. DOLAN: Yeah.

THE COURT: So if he wants to make a second game, you guys are saying this contract gives you the rights to that, or other works. So we don't know what the other works are. So if he wants to make, I don't know, a coloring book using characters that appear in the works, so Webcomic Name appears in the works, the game and the plushie, and any other unrelated characters. So that could be a character about Judge Netburn. So that seems to me to suggest that if the artist were to create any other work, a coloring book that uses any other unrelated characters, Judge Netburn, that your client would own that.

MR. DOLAN: Your Honor, I do understand your interpretation there. I think that, you know,

the way that defendants and I interpret it is in correlation with using the characters that appear in the works. So if they were to appear in conjunction, right, so if the character, Judge Netburn, were to appear alongside the blobs, then that piece of work would fall within this provision. But if Mr. Norris were to create a comic around Judge Netburn and none of the characters that he provided appear, then that work would fall outside the scope of this provision.

THE COURT: Okay. So you would have the Court excise certain provisions of this provision?

MR. DOLAN: No, Your Honor, that's just merely my interpretation of it.

THE COURT: Well, that's what we're here to do. So, you know, you have a wildly expansive interpretation of this contract. And so, you know, the words here say, "And any other unrelated characters." It doesn't seem to be tied to the works because it also is tied to other works. And so I guess if you don't think this contract would entitle your client to the artist's entire oeuvre for the rest of their life, then I'm curious how you interpret this provision.

Anything further?

MR. DOLAN: No, your Honor.

THE COURT: Okay. All right. Why don't I turn to plaintiff's counsel. And let me begin by saying in your pleading, in your briefs, I should say, you, as I understand it, claim two arguments about supporting your breach of contract claim.

The first you describe as exceeding the scope of the license, and the term "license" appears a lot. I assume you're using that word interchangeably with the agreement, which I don't read to be a license, but maybe you can illuminate if you think there's a license that's at issue here, or what it is that you're referring to when you talk about exceeding the scope of the license.

MS. PERDOMO: Your Honor, thank you. We believe that the rights granted in this agreement are extremely narrow. And because our client has a business and a -- not only a business, but his entire livelihood is around Webcomic Name Game, the intention in entering into this agreement was to grant a limited right to a specific portion of that suite of IP that the client -- that our client owns, which is the Webcomic Name Game brand and related characters and merch, et cetera.

THE COURT: Sorry, you're confusing me a

little bit. Is game part of your client's whole suite of IP or is it just Webcomic and then --

MS. PERDOMO: Webcomic is the part of my client's suite of intellectual property. We call it a license because in this agreement, our client was recruited and essentially accepted a very limited scope of work in which he licensed those properties.

In other words, all of the underlying -- not the underlying, but his entire brand, he licensed it for the limited purpose of creating the game and the plush. So in that sense, we call it a license because in our view, it's a very limited permission to use Webcomic Name for those particular works, which, in our view, we agree with your Honor, that the agreement is ambiguous, but we believe that the definition of the term "works," is clear. So that's our position.

THE COURT: Is there anything in the agreement that supports the idea of this being a license other than your interpretation of it being a narrow grant of rights?

MS. PERDOMO: I believe that because it is a narrow assignment of right, a narrow permission to use Webcomic Name. That's why I believe it's a license.

THE COURT: Okay. And how do you reconcile that concept with paragraph -- I think it's 1A?

MS. PERDOMO: Paragraph 1A discusses -- uses the term "assignment." I agree with that.

THE COURT: Plus, "Artist shall retain 0% of the copyright, 0% of the trademark, 0% of the patent, and a percentage of sales of the works".

MS. PERDOMO: Only of the works.

THE COURT: Okay. But you call that an assignment because he has other IP rights that you believe he's held onto?

MS. PERDOMO: Well, the agreement calls it an assignment, but I call it a license. We believe that, if we read the agreement in the entirety, the intent of the party was simply to grant permission to use Webcomic only for the game and the plush. So, in that sense, it's a permission to use -- limited permission, limited scope to use Webcomic for those two works that are defined throughout the agreement. And any rights that defendants receive or were meant to receive under the agreement stem only from the game and the plush.

THE COURT: Okay. Do you want to address any of these other paragraphs that we've been

talking about?

MS. PERDOMO: Yes, your Honor. With your permission, I would love to address that.

THE COURT: Okay.

MS. PERDOMO: First, in your question, your Honor, you asked how the language of the agreement supports our motion. And I think that the agreement supports our motion in three very important provisions. The first one, of course, is the definition of works. That is the first provision.

And I think -- and I believe that just by reading the contract, as you mentioned earlier, it is clear that the agreement deals with a not yet developed tabletop game and a not yet developed plush story. And that is in the preamble. And it's also cited throughout the agreement, first, in paragraph 1A, when it relates to the assignment -- when it relates to the assignment of rights that we just discussed, any rights that plaintiff was meant to receive under this contract is limited to those two specific properties.

So we believe that paragraph 1A supports our position. We also believe that paragraph 2L, as in lion, supports our position as well, because

defendants --

THE COURT: Sorry, which paragraph is that?

MS. PERDOMO: 2L, as a lion. Defendants are arguing that the works also include the underlying characters. And we believe that paragraph 2L supports our position and not theirs. Because here in this paragraph, this paragraph seems to seek a limited permission to use those characters for cameo appearances, for promotional and marketing purposes only.

So if defendants had the rights of all those characters in the first place, why did we have a clause in the agreement that specifically limits the use of those characters for promotional purposes? And so if that was the case in the first place, then why even include this? This paragraph would be unnecessary and redundant, in our view.

THE COURT: But doesn't the second sentence sort of speak a little bit to that? As I read paragraph 2L, first it says that "characters in the works, characters in the board game that make a cameo appearance." So the Judge Netburn character makes a cameo appearance in the game, "then the company can use that cameo appearance to increase

awareness of the work."

So that's saying, okay, if Judge Netburn appears in the game, then the company has the right to use Judge Netburn to promote the game. But then it continues and says "characters appearing in works," Judge Netburn, "may be used in other properties of company with no financial obligation to or expectations by the artist."

So that seems to suggest that the mere fact that this cameo appearance happened in the works, now all rights are transferred to the company without any need to compensate the artist.

MS. PERDOMO: Right, but I -- I agree with that interpretation. I think that this agreement includes characters like the Judge Netburn character, but also because it does not specify, it also includes characters that appear in the works, namely the characters, the Webcomic Name Game characters, too. And there's no distinction as to whether these are other characters or the characters that are in the work.

But in addition to this particular paragraph, there's another paragraph that also talks about future works and future characters. I think that the paragraph that discusses the Judge Netburn

type of characters is Section 3C, which you discussed earlier with defendants.

And I think that that one in particular is the one that talks about, well, if other characters come into play, then they will be included, as long as they explain what their interpretation means, as long as they also appear with the other characters, that those will be also included.

I have something to say about this particular clause, is that this clause, to us, has absolutely -- at this stage, has absolutely no undue effect because it deals with future works. And, you know, there's no game, nothing has been approved. You know, there's nothing, really. So this particular paragraph deals with future works that don't exist. And assume that if those works are ever developed, then that our client is supposed to submit those works and then the paragraph will apply. But none of that has happened yet. So -- but to us, that is the paragraph that deals with other characters.

In our view, 2L relates to all characters and is seeking limited clearance to use those characters in -- to use those characters, period.

Also, I think this is the right moment to mention the evidence on the record regarding intent, because everything ties up together. I mean, we have to take into consideration the language of the contract, but we also have to take into consideration the intent.

And as you're probably familiar with a document that is on the record and is undisputed, is the July 11 email from our client to defendants. And this email -- and I just want to remind the Court what this email says. It says, "I want" -- this email comes from our client to the defendants. "I want to make it clear that in no way does Golden Bell take ownership of any of the characters, images or story content except in its application in the game."

So recognizing plaintiff's concern in this email, Mr. Goldner sent another email to our client and said pretty much, I'll take care of this. You can use the work outside the scope of the agreement. I have changed the language. I quote, "I am resending the contract now with new language, and also specified it is for game and stuffed animals." And all of this is on the record. It is undisputed. And I think all of these clauses should

be read also in conjunction with these factual considerations that we have on the record, specifically --

THE COURT: But the Court can't consider any of this at this stage, right? Do you think that I can look at that at this stage?

MS. PERDOMO: I think, your Honor, it's important to take everything into consideration as a whole. But I understand your point.

THE COURT: Okay. And so on the specifics of your breach of contract claim, I understand you to have two points about that. The first is that the defendants breached the contract by exceeding the scope of the license, as you put it, which I believe is with respect to the two pending applications to the PTO for comic books and T-shirts and things like that. That's one element of breach of contract. And the second is with respect to whether your client -- this -- disputed facts about whether or not the final files were transferred, and if so, whether or not payment was due.

So can you speak to me with specificity about what the basis is for your breach of contract claim?

MS. PERDOMO: Your Honor, let's start by our breach of contract claim with regard to over exceeding the scope of the agreement, of the assignment, of the license, of the permissions that were granted under the agreement.

This agreement was signed only for -- the purpose of this agreement was only for defendants to develop a game based on Webcomic Name and to create some mark -- some merchandise, some plush toys, to market the game. The agreement did not give authorization to plaintiff to -- I'm sorry, to defendant to apply for products and services under multiple classes. Class 16, for example, which is the comics international classification under merch -- I'm sorry, under comics, and in particular under comics.

We also believe that at this stage of the application where plaintiff -- where defendants went and applied for these trademarks, the game was not -- it didn't exist. So we believe that it was a bad faith move to try to misappropriate the Webcomic Name -- the Webcomic Name brand from plaintiff. And, you know, it was done in bad faith and it was done against the provisions of the contract, which, in our view, are very limited to only the game and

the plush toys. So we believe that by filing those trademarks, defendants breached the agreement.

THE COURT: Okay. Why don't I have you just continue and talk to me about the second basis.

MS. PERDOMO: Right. The second basis, your Honor, the plaintiff, in October 2018 submitted over 400 game cards to the defendants. The evidence on the record shows that plaintiff continued to provide as much content as he could. It was a continuing production. But at that point where he produced more than 400 game cards and he received feedback from the defendants, multiple feedback and changes, he believed he deserved to get paid because he had worked tremendously on these items. And when he requested payment, he was denied payment.

And I think to the extent that this agreement is clear as to what the bargain for exchange here is, Mr. Norris was hired to illustrate these cards. Mr. Norris illustrated the cards, illustrated more than 400 cards, delivered them to defendants and defendants acknowledged receipt.

In his deposition, Mr. Goldner acknowledges that he received the cards, although they were not final, and that's another argument. Defendants are arguing that the cards needed to have

certain editorial -- editorial aspects of the cards were not ready. At that point in time, we believe our client was entitled to receive payment. He didn't receive payment, and then that's where the dispute started. So in other words --

THE COURT: Is it your position that you submitted final files, or is it your position that your client had worked really hard and responded to a lot of editorial comments and deserved to be paid?

MS. PERDOMO: The files were final. They needed tweaks because it's an ongoing process. But, yes, my client believes that his submission, the submission that he made to defendants constitute the final files, yes.

THE COURT: Okay. So you interpret the word "final files" as something that still is subject to some tweaks?

MS. PERDOMO: In this case, your Honor, yes, because the creative process is a long process. And if, for example, defendants wanted to release the game at that stage, they could. As a matter of fact, they said that many, many times, the files, all the parts were there. Mr. Goldner kept asking for different type of changes. But if defendants wanted to release the game at that point in time,

they could with the files that they had.

THE COURT: Okay. And you said, in October of 2018, that he gave about 400 game cards. There came a time, as I understand it in the record, that access to those files was denied by your client; is that correct?

MS. PERDOMO: No, your Honor. Let me explain. Our client sent the files through electronic means. I believe it was Dropbox or -- I don't remember exactly what it was. Several days after he submitted the files through that electronic transfer platform, Mr. Goldner said that he couldn't open the files. But then, thereafter, that was resolved, because during his deposition -- there's two points to make. During his deposition, Mr. Golder acknowledged that he was able to access those files at a later time. And when we received discovery from defendants, all of those files were in their discovery. So if he didn't receive them, how can they bounce them back in discovery?

So there's two facts that support the contention that they did receive the files.

THE COURT: Okay. And that's cited to in your 56.1 statement, citing to the evidence?

MS. PERDOMO: Yes.

THE COURT: Both the actual documents, as proof that they were received, as well as the deposition testimony?

MS. PERDOMO: I believe so, your Honor.

THE COURT: All right. Anything further on this point?

MS. PERDOMO: I think that's it, your Honor.

THE COURT: Thank you.

MR. DOLAN: Your Honor, may I respond?

THE COURT: Of course, Mr. Dolan.

MR. DOLAN: Your Honor, first, going back to plaintiff's interpretation of the contract, you are correct that you're not allowed to consider extrinsic evidence at this point for summary judgment. I think the case law makes clear in Mellon Bank v. United Bank Corp., that's 31 F.3d 113, quoting that case says, "As a general matter, we have held that when a contract is ambiguous, its interpretation becomes a question of fact, and summary judgment is inappropriate. Rather, in order for the parties' intent to become an issue of fact barring summary judgment, there must also exist relevant extrinsic evidence of the parties' actual intent."

So under plaintiff's view of the contract, she herself said this contract is ambiguous. So under her view of an interpretation of the contract, they're not entitled to summary judgment at this stage on the contract, on that point. Because if it's ambiguous, it now becomes a question of fact.

THE COURT: But you've cross-moved on the contract, haven't you?

MR. DOLAN: Yes, your Honor. Our interpretation of the contract is that it's not ambiguous and that it speaks for itself. She's attempting to bring in the parties' intent, namely the emails, which we believe are mischaracterized, but namely the emails to narrow the scope of the agreement. Specifically, the email that she noted from Mr. Goldner, which she paraphrased Mr. Goldner's response and conveniently left out the point where Mr. Goldner follows that by saying, "with respect to the copyright transfers, that portion of the agreement is already done with Jason." So he's indicating that we've already received the copyright, because they had believed that Mr. Wiseman had already purchased the copyright from Mr. Norris in a complex set of transactions.

And they believe that they had already purchased the copyright from Mr. Wiseman, who had purchased it from Mr. Norris.

THE COURT: Okay. All right. Talk to me about exceeding the scope of the agreement by filing for copyright interests in classes that are beyond the scope of the works as defined by the agreement.

MR. DOLAN: Yes, your Honor. Again, you know, our interpretation of the contract is that this is a multimedia property, right? There are multiple instances of the contract which state that. Plaintiff has claimed that the game needed to be finished and that the plush dolls need to be created and finalized before any of those copyrights kicked in. That's not necessarily the case, right? Copyright exists as soon as a work of art is placed on a tangible medium of expression. So as soon as Mr. Norris creates that artwork and sends it to defendants, that copyright protection exists.

There are multiple provisions within this contract, within this agreement that require the defendants to take due diligence in protecting their intellectual property, which is (audio distortion).

THE COURT: And so your argument, as I understand it, is because this agreement entitles

your client to all of Mr. Norris' intellectual property, that it even obligates you to file protections with the PTO. Is that accurate?

MR. DOLAN: Not all of his intellectual property, your Honor, but whatever the intellectual property relating to this game and the plush dolls, the artwork, the characters, the "Oh No" word bubbles that repeatedly appear in the sketches, that's our position, yes. They had an obligation to protect that work.

THE COURT: Right. To be clear, your view is that it's well beyond that, and that's how you interpret this contract. We've just gone over just a few moments ago, all the different ways in which you interpret the contract to be quite expansive.

MR. DOLAN: Yes.

THE COURT: Okay.

MR. DOLAN: To not rehash that.

THE COURT: Okay.

MR. DOLAN: And, your Honor, I do want to clarify the way that 2L was characterized. So I believe the way that your hypothetical read was that if you were to make a cameo appearance in Webcomic Name Game, then this provision would apply. It's

actually the opposite. So say the pink blob who was to appear in Webcomic Name Game were to make a cameo appearance in a Judge Netburn game that defendants were developing, right, then that cameo appearance has no financial obligation to Mr. Norris.

Does that make sense?

THE COURT: Not in the slightest. "Characters in the works," which we all agree "the works" means the game and the plushies.

MR. DOLAN: Correct.

THE COURT: "May make cameo appearances in company properties that are owned exclusively by the company, such as in promotional material, to increase awareness of the works." So that seems to suggest that if additional characters, like a Judge Netburn character, should appear in the board game, that the company then has the right to use the Judge Netburn character in promotional materials to promote the game.

And then it says, "Characters appearing in works" -- the Judge Netburn character that has a cameo in the board game -- "Characters appearing in works may be used in other properties of company with no financial obligation to or expectations by the artist".

So I think your reading of that would mean that because Judge Netburn appeared as a cameo in the works, now the company would own Judge Netburn, that intellectual property, and would not need to pay the artist.

MR. DOLAN: Your Honor, I'm reading it the opposite. So the way that I'm reading it is "characters in the works," the pink blob, "may make cameo appearances in other company properties".

THE COURT: Okay. But that -- isn't that other company properties to increase awareness of the works?

MR. DOLAN: Yes. So defendants own a number of different intellectual properties, different games, things like that, right. So if defendants were to create a new game centered around Judge Netburn, who does not appear in the works, Judge Netburn has never made an appearance in the board -- in the Webcomic Name Game, she's a complete independent character, and defendants decide to develop a game around that character.

Now the characters who appear in the work, the pink blob, the orange blob, all of a sudden appear on a game card of Judge Netburn's character. Then Mr. Norris is not entitled to any

financial obligation of Judge Netburn's game, because those characters are now implanted in that game to raise awareness of the Webcomic Name brand and increase that brand's awareness.

THE COURT: Okay. Do you want to talk about the game files?

MR. DOLAN: Yeah, sure. So, first off, the files that were delivered to defendants were black and white sketches. The ones that are in discovery, they're black and white sketches. They didn't have color. They didn't have a back. They didn't have things necessary to actually print and finalize and publish a game. So I think that plaintiff's assertion that if defendants wanted to make a game, they could have.

Well, that's not necessarily how this agreement was supposed to work. The parties were supposed to work together to finish the game and publish it. Plaintiff herself admitted that there were tweaks that were needed to these files, even as delivered. So I think that that, in and of itself, contradicts the word "final" in the plainest general meaning.

Additionally, as plaintiff admitted, the files were delivered October of 2018. Now, just

after that, defendants attempted to access the Dropbox link. And as we cited in our brief, and as is the record, after Mr. Norris explained it, once again, that there's an editorial process to this, that they need to be reviewed and finalized, and that there are multiple notes, Mr. Norris attempted to review the links via the link provided, the Dropbox link by Mr. Norris. And he explained the link to the files are not working and if access has been deleted, please let me know. Mr. Norris never responded to that email, never followed up, never said, my apologies, here's a new link. We never received those files, those specific reported October 2018 files.

Now, even if we had, your Honor, assuming arguendo that those were filed files, which they were not, and that we had received them, plaintiffs had 30 days to review and issue payment of those files.

THE COURT: Defendants.

MR. DOLAN: Defendants, yes, your Honor.

So by restricting access within those 30 days, defendants had an opportunity -- still had an opportunity to deliver payment within 30 days of that delivery. They were never afforded that

opportunity because they were actually --

THE COURT: Can you respond to Ms. Perdomo's comment that, in discovery these files were produced by you to suggest that they were received?

MR. DOLAN: Yes, your Honor. My understanding is that those were an initial rough draft of the files which were provided in June of 2018, which were further editorialized, which is what the parties are discussing in those October emails that you see in the record, where they note that there are multiple notes and edits that needed to be made. So those files were initially a rough draft of the game, not the final files.

THE COURT: And so I don't have the deposition transcript in front of me, but Ms. Perdomo tells me that Mr. Goldner testified at his deposition that he did receive these files in October. Is that a false statement?

MR. DOLAN: I don't believe that he said he received -- I don't have the deposition in front of me either, your Honor. I don't believe he said he received them in October. I do believe he did, at one point, say that he received files from Mr. Norris. However, those files were not final, and I

believe they were black and white sketches.

THE COURT: Okay. Can I bother you one more time about this contract and see if you can help me understand it?

MR. DOLAN: Absolutely, your Honor.

THE COURT: What do you think paragraph 1H does?

MR. DOLAN: So, your Honor, this clause was entered into because -- or entered into the agreement because during the initial negotiations of the parties, Mr. Norris had indicated that he had already had a signed contract with a book publisher. Not wanting to prevent Mr. Norris of that livelihood, this clause was placed into the contract. It was later revealed to defendants that there was actually no contract in place for that book.

THE COURT: But this isn't limited to a book. This says, "Artist has the right to pursue his comic Webcomic Name outside the context of this agreement." This would seem to suggest that he can continue to develop his comic strip and use the Webcomic Name without issue. Though, as I understand it, you filed an application with the PTO in the class of comics.

So how do you reconcile paragraph 1H with your conduct? Any response?

MR. DOLAN: Your Honor, I do see where your interpretation of that clause, on its face, would support your statements. I would say that there is extrinsic evidence there relating to the intent behind that clause, which obviously, at this phase, is not appropriate for summary judgment, because that would make the clause ambiguous.

I will say, your Honor, it --

THE COURT: It seems pretty unambiguous to me. What part of this is ambiguous?

MR. DOLAN: Well, your Honor, just the intent behind that clause being extrinsic evidence.

THE COURT: Okay. And if the Court were to conclude that paragraph 1H is unambiguous and allows the artist to retain all of his rights in the comic, Webcomic Name, would you concede that you breached this agreement by filing a trademark application in the class of comics?

MR. DOLAN: No, your Honor. No, your Honor, I would not -- I would not say that that exceeds the scope of this agreement. Because if we turn to Section 3D of this agreement, this does provide the defendants with an option on the

defendants -- on Mr. Norris' next book or manuscript latent work, which he indicated to defendants that he was producing.

THE COURT: And they had exercised that option?

MR. DOLAN: Yes. And, your Honor, in that testimony Mr. Norris provided during his deposition, he admitted that defendants did exercise that option, but he didn't understand what an option meant, and he chose never to deliver those files.

THE COURT: Was your client represented in the execution of this agreement, represented by counsel?

MR. DOLAN: We're not sure, your Honor. Not by me.

THE COURT: Okay. Do you know who drafted this agreement?

MR. DOLAN: I do not, your Honor.

THE COURT: Ms. Perdomo, do you have any explanation as to who drafted this agreement? It's too old for it to be ChatGPT, but that would be one explanation.

MS. PERDOMO: Mr. Goldner drafted this agreement. But he's here, so he can tell you if he did or if he did -- or if he didn't.

I wanted to make a quick point, your Honor, before we leave that just to make sure that we're on the same page. We believe that some of the provisions of the agreement are unambiguous, for example, the definition of "works".

When I said that other provisions are ambiguous, that -- I agree with you. But in our view, the provisions that support our motion are unambiguous. So, to us, the definition of "work" is clear, and that could be decided as a matter of law. I just wanted to clarify that for the record for you, because we're not on the record.

THE COURT: We are on the record. We're recording this, and I'm going to direct that you all order a transcript when we're done.

MS. PERDOMO: Perfect. Okay.

And I think that's all I wanted to say. But yes, with regards to who drafted the agreement, I am not sure.

THE COURT: Was your client represented by counsel when he signed this agreement?

MS. PERDOMO: No, your Honor, he was not.

THE COURT: Okay.

MR. DOLAN: Your Honor, I will say that there is evidence in the record indicating that Mr.

Norris had this agreement reviewed both by the publishing -- the publishing company that he indicated he had a contract with, the upcoming book for and by his agent. He does say that to defendants, that I'm having my agent review this agreement, and I'm also having the publishing company review this agreement so that it doesn't breach my contract with them.

MS. PERDOMO: The agent and the publishing company are not attorneys, and Mr. Norris testified that he had no one to ask. And he did send it to them, but they did not provide any legal feedback.

THE COURT: All right. Let's move on to what I think is the last issue, which is with respect to plaintiff's claim for cancellation of the 281 mark.

So, Ms. Perdomo, why don't I ask you to explain this claim for me.

MS. PERDOMO: Your Honor, if a trademark has never been used in commerce, ever, a trademark is subject to cancellation. Mr. Goldner testified clearly that he's never commercialized with any of the properties. As a matter of fact, the properties have never been created. So when he did apply --

THE COURT: Which properties are you referring to?

MS. PERDOMO: The game has not been ever created. He did create a plush toy, but he never sold any of them.

So in order for an applicant to satisfy the use in commerce requirement, the mark has to be in commerce at one point in time, right? And that satisfies the first pillar. But then the mark has to continue to be in commerce throughout a certain amount of period of time. For this proposition, we have a case. It is Silberstein v. Fox Entertainment Group, and I'm going to quote a portion of this case. "Common law trademark rights develop when goods" --

THE COURT: Can speak more slowly, please.

MS. PERDOMO: Sorry. I apologize.

"Trademark rights develop -- and I quote, "Trademark rights develop when goods bearing the mark are placed in the market and followed by continuous commercial utilization." So if a mark is not being used in commerce, and using commerce is not merely advertising the goods in commerce, there has to be actual transactions and sales of the goods

and services.

Mr. Goldner, in his deposition, clearly said he's never, ever sold any of these goods. And so that's the reason why the trademark is subject to cancellation. It's a very basic trademark concept.

THE COURT: And so if Nike were to design a new sneaker, it could not file for trademark protection until after it had sold some sneakers?

MS. PERDOMO: No, your Honor, they could file initially on an intent-to-use basis. But if Nike files on an intent-to-use basis, Nike has three years, based on the trademark statute, to submit evidence of use.

And what happened in the Webcomic Name trademark that defendants filed was that they submitted proof within those three years, quote, unquote, proof-of-use. But that proof-of-use was false because they never used the goods in commerce per the definition of the Trademark Act. The only action or the only step that they took towards commercializing those goods was to post -- to take a photograph of the plush toy at one point in time, submitted that as a specimen of use. But then because they never sold it, then that requirement of continuing using commerce is not met, so the

trademark must be canceled. That is with regards to class 28. The only preliminary proof of use that they had was that photograph of the plush, but then that failed later on because they never sold the plush toy and never continued to commercialize with it.

In terms of all the other items that are described under class 28, none of those have been created, so never used in commerce.

THE COURT: Thank you.

Mr. Dolan?

MR. DOLAN: Yes. Your Honor, first, I would like to say that the marks -- the trademarks in class 28 have been used in commerce. There's a Pretending to Grownup card drafted by Mr. Norris which indicates the pink blob, the orange blob and the "Oh No" worry blob.

THE COURT: And so is it your view that that card, in a different game, is sufficient to validate the 281 mark?

MR. DOLAN: Your Honor, I don't have the application in front of me. Is the 281 mark the comic book section or --

THE COURT: It's the only one that you have, as I understand it.

MR. DOLAN: Yes, your Honor, because you can trademark individual game cards under that trademark category, which is a part of what defendants selected when applying for the trademark under that category.

THE COURT: Sorry. As I understand it, the trademark that you received, the 281, authorizes the use of the Webcomic IP in the game and the plush. And plaintiff's counsel is saying, well, that is subject to cancellation because you never used those things in commerce, because you never -- sir, it's important, at least, that your lawyer understands what I'm saying before you talk to him, so if you can just give us a moment. If you -- now I've lost my train of thought.

If your mark is filed, as I'm suspecting, and plaintiff is suspecting, on an intent-to-use basis, but then you never made that game and you never sold that plushie, why are you still entitled to that mark? Why shouldn't it be canceled?

MR. DOLAN: Well, first, your Honor, I would point to the defense of unclean hands. The reason that this game was never created, the reason that the plushie was never created is because within that three-year period --

THE COURT: Is that a defense to the cancellation?

MR. DOLAN: Your Honor, I don't have any authority to cite that directly. You know, I can go back and look at that, but I will say that, you know, plaintiff never delivered the files. Plaintiff initiated the suit within that three-year period, preventing defendants from publishing that game and placing it into commerce.

THE COURT: Okay. Let's set aside that defense, which may or may not be even available.

MR. DOLAN: Yes. And yes, your Honor, I do believe that that specific game card, which defendants do have the rights to via a contract with Jason Wiseman, who's not a party to this suit, obviously, they do have the rights to that card. That card is placed in commerce. That card is used in promotional identifying factors of the game, Pretending to Grownup. That game is still available commercially through a number of different outlets. It sold over $200,000 in revenue. It sold thousands of units.

THE COURT: But was Pretending to Grownup what you got the mark in, the 281 mark?

MR. DOLAN: No, Webcomic Name is.

THE COURT: So explain to me, and if you have any cases, that would be helpful, that entitle your client to continue to hold the 281 mark based on a game card from a different game.

MR. DOLAN: So, your Honor, again, I don't have any case law that is directly on point to this issue, but I will say you are allowed to trademark individual game cards of a game under category 28. The game card that we're referencing here in Pretending to Grownup is a game card drafted by Mr. Norris. It has the pink blob, the orange blob, "Oh No," and it has the Webcomic Name on it.

So defendants are entitled to trademark that card and that brand because it is an individual, unique identifying card within that package. Because it's a, quote, unquote, guest card. It's the only card within that game that is produced by Mr. Norris.

THE COURT: And so 281 is not an application to trademark that card, correct? Isn't it to trademark the Webcomic game?

MR. DOLAN: Your Honor, I believe 281 is an application to trademark Webcomic Name as a whole.

MS. PERDOMO: Your Honor, if I may,

quickly, 281 is a registration. 281 is a registration, and it's a registration under class 28. Class 28 -- if done properly, class 28 will allow the registration of expansions and individual cards.

The problem that defendants have is that they never affixed or commercialized this card, just for purposes of illustration, as a Webcomic Name Game card. So this card alone did not have the graft for Webcomic Name. So I would love to see this argued to one of the examiners in the USPTO, saying, like, hey, here's my specimen of use for the Webcomic Name Game card. And how can they reconcile that? This was one single card in a different game under a different brand that has nothing to do with the Webcomic Name trademark.

Also, your Honor, my experience with trademark prosecution is that if you file, as a specimen of use, one item only -- for example, if I wrote a book, if I write a book, the Fran Story, and I apply to register my book before the USPTO, I will do it on intent-to-use. But if I want to just file that single book that I publish on Amazon, the first office action I'm going to receive is, where are the other books? Where is the other series?

So one card alone, even if they were, like, assuming arguendo, is that they commercialized this card alone under the Webcomic Name Game brand, and that was the only card they commercialized with, they're going to have a problem with that, too, because it's not part of a series of products under that particular brand.

So that's why the registration must be canceled, because none of those items that are described in the application have been ever used in commerce.

THE COURT: Thank you.

MR. DOLAN: Your Honor, my understanding of the series requirement is it applies to books, it doesn't necessarily apply to game cards. And I will say that the image that plaintiff's counsel held up is an image of what is on the card, but it's not a complete image of the card. The card itself does contain the name Webcomic Name on it.

THE COURT: And can you point to me where that card is.

MR. DOLAN: Your Honor, I would have to double check to see if we submitted it as an exhibit to our summary judgment brief. I do believe it's in discovery somewhere.

MS. PERDOMO: Excuse me, your Honor, if I may. Even if, assuming -- I don't believe it says Webcomic Name. But even if, assuming that was an oversight on my end, it was not sold as a Webcomic Name product. It was part of a game called Pretending to Grownup. So that's not branding. Actually, that's a principle of branding 101. It cannot be considered a trademark product.

THE COURT: Can you draw my attention, in the voluminous filings, of where the trademark application is?

MS. PERDOMO: Sure. The application or registration? Because I have the certificate here. I can give it to you.

THE COURT: I'd like it in what's filed with the Court.

MS. PERDOMO: Right. I think -- yes.

Okay. So, your Honor, you can file it -- you can find it -- the application is under Docket Number 119-7. It's attached to Mr. Norris' declaration. The application is attached to Mr. Norris' declaration under that docket number, and the registration is also attached under Docket 119-8. And that trademark registration ends in 581.

THE COURT: Unfortunately, the courtesy

copy is -- the ECF headers are all blurred, so I can't follow that, but I guess I will just find it on my own.

Okay. Anything further, Ms. Perdomo, that you'd like to present?

MS. PERDOMO: May I have a second, please?

THE COURT: Sure.

MS. PERDOMO: Your Honor?

THE COURT: Yes.

MS. PERDOMO: Nothing further.

THE COURT: Okay. Anything further from Mr. Dolan?

MR. DOLAN: No, your Honor.

THE COURT: Okay. I'm going to order that the parties get a copy of this transcript, needs to be transcribed. So I'll have my courtroom deputy explain to you how to do that, how to make an application to order it. I'd like you to order it for expedited production so that we can review it as quickly as possible, and the parties should split the cost of that. And then we will get our decision out shortly.

I think it's highly unlikely that this case is going to end as a result of these summary

judgment motions. And I know that the parties once were engaged in settlement discussions. I certainly think it's in everybody's interest to continue those settlement discussions. And if anything should change, you should let me know right away. Otherwise, the Court will issue its opinion in due course.

Thank you, everybody. We're adjourned.

MR. DOLAN: Thank you, your Honor.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Alexander Norris d/b/a Webcomic Name v. Marc Goldner, et al., Docket #19cv5491 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano

ADRIENNE M. MIGNANO, RPR

Date: April 28, 2023